

FIRM CODE 11-3410831
HEARING DATE: May 22, 2014
TIME: 10:00

a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

JOSEPH F. UVINO AND WENDY M UVINO

**NOTICE OF MOTION
TO RE-OPEN CASE**

CHAPTER 11
CASE NO. 09-15225-BRL

Debtor.

PLEASE TAKE NOTICE that upon the annexed Affirmation of MICHAEL C. MANIELLO a motion pursuant to 11 U.S.C. Section 350 and Bankruptcy Rules 3022, 5009, and 5010, will be made as set forth below:

JUDGE: HON. Burton R. Lifland

RETURN DATE AND TIME: May 22, 2014 @ 10:00 A.M.

COURTHOUSE: U.S. Bankruptcy Court
Bowling Green, N.Y., N.Y.10004

RELIEF REQUESTED: An order granting applicant City National Bank:

- (1) relief pursuant to 11 U.S.C. §350 on the grounds that debtor has failed to make required payments pursuant to the Second Amended Plan of Reorganization to City National Bank; and
- (2) relief pursuant to Bankruptcy Rule 5010 due to Debtors' failure to make required plan payments to City National Bank; and

(CONTINUED ON NEXT PAGE)

- (3) for such other, further and

Pg 2 of 7
different relief as may be just,
proper and equitable.

Dated: Syosset, New York
April 25, 2014

PETER T. ROACH AND ASSOCIATES, P.C.

/s/ Michael C. Manniello
BY: MICHAEL C. MANNIELLO
Attorneys for City National Bank
125 Michael Drive, Suite 105
Syosset, New York 11791
(516) 938-3100 ext. 336

To:

JOSEPH F. UVINO

Debtor
50 East 89th Street, Apt 22F
New York, NY 10128

WENDY M. UVINO

Joint Debtor
50 East 89th Street, Apt 22F
New York, NY 10128

AVRUM J. ROSEN, Esq.

Law Offices of Avrum J. Rosen, PLLC
Counsel for Debtors
38 New Street
Huntington, NY 11743

United States Trustee

Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10004

Serene K. Nakano, Esq.

Counsel for Trustee
U.S. Department of Justice U.S.
Trustee's Office
U.S. Federal Office Building
201 Varick St., Room 1006
New York, NY 10014

Maureen T. Bass, Esq.

Buchanan Ingersoll & Rooney, P.C.
Counsel for Bank of America, N.A.
50 Fountain Plaza
Suite 1230
Buffalo, NY 14202

Andrew Goldberg

Rosicki, Rosicki & Associates, P.C.
Counsel for CitiMortgage, Inc.
51 East Bethpage Road
Plainview, NY 11803

Brian J. Lester

Tarbet, Lester & Schoen, PLLC
Counsel for East Hampton Fence, Inc.
P.O. Box 2635
Amagansett, NY 11930

Thomas J. Luz

Karaahmet Luz & Greenberg LLP
Counsel for City National Bank
370 Lexington Avenue
24th Floor
New York, NY 10017

Martin A. Mooney

Deily, Mooney & Glastetter, LLP
Counsel for DCFS USA, LLC
8 Thurlow Terrace
Albany, NY 12203-1006

CONTINUED ON NEXT PAGE

Martin A. Mooney

Deily, Mooney & Glastetter, LLP
Counsel for Mercedes-Benz
Financial Services USA LLC
8 Thurlow Terrace
Albany, NY 12203-1006

Eli J. Rogers

Dreifuss Bonacci & Parker, LLP
Counsel for J. Barrows, Inc.
26 Columbia Turnpike, North
Entrance
Florham Park, NJ 07932

Fred Stevens

Klestadt & Winters, LLP
Counsel for J. Barrows, Inc.
570 Seventh Ave.
17th Floor
New York, NY 10018

Michael T. Sucher

Counsel for F. Schneider
Construction Corp.
26 Court Street
Suite 2412
Brooklyn, NY 11242

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

AFFIRMATION IN SUPPORT

JOSEPH F. UVINO AND WENDY M UVINO

CHAPTER 11

CASE NO. 09-15225-BRL

Debtor.

-----X

MICHAEL C. MANNIELLO, an attorney duly admitted to practice before this Court, affirms under penalty of perjury as follows:

1. I am associated with PETER T. ROACH AND ASSOCIATES, P.C., the attorney for City National Bank (hereinafter "Applicant"). I have reviewed the file maintained by this office and based on the documents, pleadings, notes and other memoranda contained therein I am familiar with the proceedings heretofore had herein.

2. I make this affirmation in support of Applicant's motion for an order granting Applicant relief to re-open this bankruptcy case pursuant to 11 U.S.C. §350 and for relief under Bankruptcy Rules 3022, 5009 and 5010 on the grounds that debtors have neglected and failed to make payments required under the Second Amended Plan of Reorganization.

3. The jurisdiction of this Court is invoked pursuant to 11 U.S.C. Section 362, the Order Modifying Debtors' Second Amended Plan of Reorganization, and the Bankruptcy Amendments and Federal Judgeship Act of 1984.

4. Debtors' Second Amended Plan of Reorganization was filed in this matter on May 1, 2012 ("Second Amended Plan"). A copy of the Second Amended Plan is annexed hereto as Exhibit "A". An Order Confirming Debtors' Second Amended was entered on February 15, 2012 ("Order Confirming Second Amended Plan"). A copy of that Order is annexed hereto as Exhibit "B". City National Bank's debt was included in the Second Amended Plan as a Class 7 debt in the amount of \$664,764.22.

5. Pursuant to the Order Confirming Debtors' Second Amended Plan of Reorganization at paragraph 16, City National Bank elected to take 100% payment on its claim of \$664,762.22 over five (5) years. Pursuant to paragraph 27 of the Order Confirming Amended Plan, the Court directed that "the allowed general unsecured creditors shall receive 100% of their allowed claims payable at 20% of their allowed claim per year for five (5) years without interest."

6. An Order Modifying Debtors' Second Amended Plan of Reorganization ("Order Modifying Second Amended Plan") was entered in this case on May 24, 2012. A copy of the Order Modifying the Second Amended Plan is annexed hereto as Exhibit "C". The Order Modifying Second Amended Plan, modified the Plan for the general unsecured creditors who elected to take a distribution over five (5) years "to provide for twenty (20) quarterly payments each in the sum of \$46,132.21 rather than

annual payments of \$184,528.82 per year for five (5) years;"

Therefore the effect of the Order Modifying Second Amended Plan on City National Bank was that it was to receive twenty (20) quarterly payments of \$33,238.11.

7. A Final Decree was entered in this case on March 4, 2013 by which the Court closed the case but retained jurisdiction as provided in the plan. A copy of the Final Decree is annexed hereto as Exhibit "D".

**DEBTOR HAS FAILED TO MAKE THE REQUIRED
PLAN PAYMENTS TO APPLICANT**

8. City National Bank has not received the full quarterly payment due it commencing with the quarterly payments due January 2013 and thereafter. Notice of default (Exhibit "E") was sent to Debtors pursuant to Section 9 of the Second Amended Plan. More than ten (10) days have passed and the Debtors have not cured the failure. An event of default now exists under the Plan. Applicant's affidavit of payment default is submitted herewith.

9. The Second Amended Plan at Section 10.1 sets forth that the Court shall retain jurisdiction of this case for certain purposes including:

"(f) to hear and determine all controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan; ...

(q) to make such orders as are necessary or appropriate to carry

out the provisions of the Plan, including but not limited to orders interpreting, clarifying or enforcing the provisions thereof."

11. Pursuant to Section 350(b) of the Bankruptcy Code, the Court may re-open a closed case for cause. As the Court retained jurisdiction over the case as set forth in the Plan and the subsequent orders, request is made that the case be reopened pursuant to Section 350(b) and Rule 5010. Once the case is re-opened Applicant is entitled to have Debtor's discharge as it pertains to applicant's debt rescinded.

12. Applicant is also entitled to relief from the stay because the Debtor herein has failed, neglected and refused to make the payments required under the Chapter 11 Plan and the default continues to the date hereof.

WHEREFORE, Applicant respectfully requests an Order of this Court vacating the automatic stay by virtue of 11 U.S.C. Section 362 as to Applicant; granting Applicant the fees and costs associated with the within motion; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: Syosset, New York
April 25, 2014

/s/ Michael C. Manniello

Michael C. Manniello (11-3410831)